



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0326]

RIN 1625-AA00

Safety Zone; Discovery World Fireworks, Milwaukee Harbor, Milwaukee, WI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone within Milwaukee Harbor, Milwaukee, Wisconsin. This safety zone is intended to restrict vessels from a portion of Milwaukee Harbor due to 4 fireworks displays at Discovery World Pier. This proposed safety zone is necessary to protect the surrounding public and vessels from the hazards associated with these fireworks displays.

DATES: Comments and related materials must be received by the Coast Guard on or before [30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0326 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414-747-7148, e-mail Joseph.P.McCollum@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address,

an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0326) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0326) in the "SEARCH" box and click "SEARCH." Click on "OPEN DOCKET FOLDER" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the

Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

Bartolotta Catering Company has informed the Coast Guard of 4 fireworks displays planned for 2013. These displays are scheduled for July 10; August 3 and 22; and October 5. Each display is expected to involve fireworks

no larger than 4" in diameter and will be fired from the same location on Discovery World Pier. The Captain of the Port, Lake Michigan, has determined that the likelihood of transiting watercraft during the fireworks displays presents a significant risk of serious injuries or fatalities. The safety risks associated with these displays include falling debris, accidental detonations, and the spread of fire among spectator vessels.

C. Discussion of Proposed Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this proposed rule establishes a safety zone that encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within the arc of a circle with a 300-foot radius from the fireworks launch site located in approximate position 43°02'10.7"N, 087°53'37.5"W (NAD 83).

This proposed rule will be effective from July 10, 2013, until October 5, 2013. This safety zone will be enforced from 9 p.m. until 11 p.m. on July 10; August 3 and 22; and October 5, 2013.

The Captain of the Port Lake Michigan will use all appropriate means to notify the public when the safety zone in this proposal will be enforced. Consistent with 33 CFR

165.7(a), such means of notice may include, among other things, publication in the Federal Register, Broadcast Notice to Mariners, Local Notice to Mariners, or upon request, by facsimile (fax).

Entry into, transiting, or anchoring within the proposed safety zone during the period of enforcement is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative. The Captain of the Port, Lake Michigan, or his designated representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude

that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone established by this proposed rule will be relatively small and enforced for two hours on a given day. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within the affected area is expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the vicinity of the Discovery World Marina or Lakeshore inlet during the period that this proposed zone is enforced.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone and thus, is categorically excluded under paragraph (34)(g) of the Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that

may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0326 to read as follows:

§ 165.T09-0326 Safety Zone; Discovery World Fireworks, Milwaukee Harbor, Milwaukee, Wisconsin.

(a) Location. All waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within the arc of a circle with a 300-foot radius from the fireworks launch site located in approximate position 43°02'10.7"N, 087°53'37.5"W (NAD 83).

(b) Effective Period. This safety zone will be effective from July 10, 2013, until October 5, 2013. This safety zone will be enforced from 9 p.m. until 11 p.m. on July 10; August 3 and 22; and October 5, 2013.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port, Lake Michigan to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

(2) This safety zone is closed to all vessel traffic except as may be permitted by the Captain of the Port, Lake Michigan, or his designated representative. All persons and

vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Lake Michigan or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) Notification. The Captain of the Port Lake Michigan will notify the public that the safety zone in this section is or will be enforced by all appropriate means to the affected segments of the public including publication in the FEDERAL REGISTER as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

Dated: May 6, 2013

M.W. SIBLEY
Captain, U.S. Coast Guard
Captain of the Port, Lake Michigan

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